

Approved as Submitted: May 4, 2005

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – APRIL 20, 2005**

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Tate and Mayor/Chairman Kennedy
Later Arrival: Council/Agency Members Grzan (6:05 p.m.) and Sellers (6:20 p.m.)

DECLARATION OF POSTING OF AGENDA

Deputy City Clerk/Agency Secretary Malone certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 4

2.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:

Authority: Pursuant to Government Code 54956.9(a)
Case Name: General Lighting Service, Inc. v. Wells Construction Group, et al. [Consolidated
Actions]
Case Number: Santa Clara County Superior Court, Lead Case No. 1-04-CV-025561

3.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:

Authority: Pursuant to Government Code 54956.9(a)
Case Name: City of Morgan Hill v. Hernandez
Case Number: Santa Clara County Superior Court, Case No. 1-04-CV-020063

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:02 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:07 p.m.

CLOSED SESSION ANNOUNCEMENT

Acting City Attorney/Agency Counsel Siegel announced that the City Council was given direction under anticipated litigation, but there are no reportable actions.

SILENT INVOCATION

Mayor/Chairman Kennedy led the silent invocation.

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairman Kennedy, Charles Weston, as Chairman of Independence Day Incorporated, led the Pledge of Allegiance,

RECOGNITIONS

Mayor Kennedy presented Certificates of Recognition to members of the Day Worker Center Committee and the workers who contributed to the construction and completion of the new Day Worker Center facility in Morgan Hill. Those receiving certificates were: the staff at Associated Concrete, and at Bejarano Electric; Hedy Chang, Kevin Costa of K.C. Heating; Dave Delmue of Danny Fence; Steve Dudek of E-Wire Solutions; Bob Gomez; Chris Hauge of West Hills Community Church; Rich Heiser of Trincherro Construction; Mike Johnson of Johnson Ace Hardware; Tom Lopez of Day and Nite Towing; Rod Martin of Dividend Homes; Bill McClintock of MH Engineering; Ced Martin; Dick Oliver of Dividend Homes; the staff at Quality Plumbing; Scott Schilling of South Valley Developers; Jim Schipsi and Dave Sornberger of Trincherro Construction; Paul Swing of Techcon; Jim Tarp of JET Electric; Charles Weston of Weston-Miles Architects; and Julian Mancias.

Julian Mancias reported that the Day Worker Center is now open and is being organized; and it should be up and running fully within a few more days. He also presented the City with Certificates of Recognition for three city staff members, Ken De Luna, Jim Rowe, and Larry Ford, for their outstanding work in assisting with the Day Worker Center. He introduced the new director of the Day Worker Center, Ms. Eloisa Gamez.

Ms. Gamez reported that they are currently publicizing that the Center is now open and asking community agencies such as churches and the newspaper to get the word out to the public. They already

have someone to teach the English as a second language classes, and a nurse to train in nutrition and health.

Mr. Mancias announced that there will be a Cinco de Mayo celebration held at the Community Park and invited all to attend.

Mayor Kennedy presented Certificates of Recognition to the citizen members of the Urban Limit Line Committee, and thanked them for their significant contribution to the future of the city over the last two years through their work on this committee. The citizen members of the Committee that were presented Certificates of Recognition were Michele Beasley, Tim Chiala, Jim DiVittorio, Placido Forestieri; Rocke Garcia, Mark Grzan, Janice Guglielmo, Alex Kennett, Joe Mueller, Richard Palmisano, Art Puliafico, Bruce Tichinin, and George Thomas. Mayor Kennedy also recognized and thanked former Council Member Hedy Chang for her work on this Committee.

Ms. Julie Osborne, of South Valley Disposal, introduced the Business Recycler of the Year - Fox Racing, and the Residential Recycler of the Year - The Becker Household; and presented them with a Recycler of the Year plaque from South Valley Disposal.

PROCLAMATIONS

Mayor Kennedy proclaimed April as National Volunteer Month. The proclamation will be forwarded to the Volunteer Center of Silicon Valley.

PRESENTATIONS

County Supervisor Don Gage, serving as the Chairman of the Housing Trust of Santa Clara County, thanked the Council for their support of the Housing Trust; and he gave a presentation on the Housing Trust of Santa Clara County and some of the projects they have completed in Morgan Hill. He thanked the Council for their consideration of the item on tonight's agenda, stating that he is hopeful that they will continue to support the Trust. He stated that many other counties and cities are trying to duplicate the methods used here, and because they have not had the same kind of support from their legislative bodies, they have found it difficult to get started in their communities. He thanked the Council for their vision and support.

Ms. Rosemary Kamei, of the Santa Clara Valley Water District, gave a presentation on the Water Resources Protection Collaborative project. She stated that the District is working on multiple projects with the City of Morgan Hill, and that she was here tonight to share the progress that has been made on the Collaborative effort to protect water resources. She expressed thanks to Jim Ashcraft, Director of Public Works, for his hard work on the project. She distributed printed information to the Council regarding the Upper Llagas Creek Project progress report for March 2005, an update on the Perchlorate issue dated April 19, 2005, and a fact sheet on AB1590 Property Tax Revenue Allocations bill.

Ms. Kamei introduced Ms. Ann Draper, of the Santa Clara Valley Water District, and Jim Ashcraft, Director of Public Works, who provided a PowerPoint presentation of the Progress Report on the Water

Resources Collaborative project. They reported on the status of the development of standard practices for environmental stewardship of water throughout the County of Santa Clara; as well as the development of basic guidelines for early consultation by the cities of the water district in the development process for all the cities in the County.

Mayor Kennedy asked them about a report he had heard that the Corp of Engineers had recently changed the criteria for the PL566 project. Ms. Kamei responded that in reviewing the economics of the project, the Corp had found that the ratio of the economics had turned out not to be as high as they had anticipated. She stated that her staff was scheduled to meet with the Corp next week to work out what can be done, and she will have more information to report at the next quarterly update in late May or June.

Mayor Kennedy asked Mr. Ashcraft to investigate the possibility of holding a special meeting due to the urgency of the issue.

CITY COUNCIL REPORT

Council Member Grzan reported on his involvement in the Utilities and Environment Subcommittee. He stated that water conservation issues they had discussed resulted in the Water Submetering Ordinance scheduled for consideration on tonight's agenda. This Subcommittee has also been reviewing the perchlorate issue and water quality; and he was happy to report that the water quality in Morgan Hill wells was given a "non-detect" for perchlorate levels for the last quarter.

He also is on the Financial Policy Subcommittee, but has not yet had a meeting. One of the issues they will be reviewing is the possible survey of the community regarding the financial situation of the city.

CITY MANAGER REPORT

City Manager Tewes stated he had no report this evening.

CITY ATTORNEY REPORT

Acting City Attorney Siegel stated he had no report this evening.

OTHER REPORTS

City Treasurer Roorda presented the City Treasurer's Quarterly Report. He stated that typically the General Fund revenues tend to appear lopsided, as the largest portion comes in at the end of the year. He did note there has been an increase in our sales tax revenue and that expenses appear to be running about 2% less than expected. The anticipated increased expenses in the Police Department and pensions are now starting to hit. The cash position of the General Fund is still strong, with more than \$9 million in fund reserves. The General Fund balance is allowing the City to move cautiously and adjust as they go along. There has been some increase in property tax over last year in the shift from the vehicle tax. He stated that our sales tax revenues have increased 6.6% this year, and encouraged Morgan Hill

citizens to shop locally in order to increase this number. This growth in sales tax revenue will help resolve some of the budget issues as we go forward.

He stated that recent expenses may cause the revision of the anticipated \$1.9 million deficit for this year unless the revenues are received as projected.

In response to a Council inquiry from Council Member Grzan, Mr. Roorda stated that the current financial situation is not drastically off from the projected 5-year plan; and if we stick with that plan, the city can sustain long enough to allow the Council and the community to deal with the imbalance and come up with a plan for new revenue sources. Without new revenue sources, a reduction in services may need to be considered.

City Manager Tewes stated that his recommended budget will be presented to the Council on May 14. At that time the Council will be reviewing the current year's revenue and expenses as well as the projections for the coming year. Though he is still working on the budget, he does not believe the current year's deficit will reach the levels of Mr. Roorda's concern.

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

- Mr. Bruce Tichinin addressed the Council regarding the City of Morgan Hill v. Vierra, as the Attorney for Howard Vierra. He provided the Council members with a letter, and asked the Council to respond to the letter. He noted that the court date scheduled for this case is currently June 8; and though he understands that the city does not yet have an attorney to advise them, he is concerned that the city is not going to be ready at that time. He asked that the council take whatever action is necessary to proceed with this hearing on June 8; and to please move this matter along as quickly as possible.
- Mayor Kennedy announced that the Sister City Committee of Morgan Hill and the County of Santa Clara/Province of Florence, Italy Sister County Commission extended an invitation to all to attend the Italian Pranzo in the Vineyard to be held on May 5, 2005 at 6:00 p.m. at the Guglielmo Winery in Morgan Hill. This is to honor the official delegation from Florence, Italy.

No further comments being offered, the Mayor closed the public comment.

City Council Action

CONSENT CALENDAR:

City Manager Tewes stated that there were several agreements on the consent calendar this evening, and that as part of the Council motion to approve the consent calendar, the term “approved as to form by the City Attorney” should be considered added to all these agreements.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, and including the language of “approved as to form by the City Attorney” for all agreements, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1-14, as follows:*

1. **MARCH 2005 FINANCE & INVESTMENT REPORT**

Action: ***Accepted** and **Filed** Report.*

2. **AWARD CONTRACT FOR CONSTRUCTION OF INTERIM OVERFLOW PARKING LOT AT THE AQUATICS CENTER**

Action: *1) **Awarded** Contract for Construction of the Interim Overflow Parking Lot at the Aquatics Center to Trincherro Construction in the Amount of \$50,477; Subject to Review and Approval by the City Attorney; and 2) **Authorized** Expenditure of up to 10% (\$5,048) for Construction Contingency.*

3. **AGREEMENTS WITH PACIFIC MUNICIPAL CONSULTANTS, AND THE INSTITUTE & CORRALITOS CREEK LLC REGARDING IMPLEMENTATION OF THE INSTITUTE GOLF COURSE PUD MITIGATION MONITORING AND REPORTING PLAN (MMRP)**

Action: *1) **Authorized** the City Manager to Execute the Agreement between the City of Morgan Hill and Pacific Municipal Consultants, Subject to Review and Approval by the City Attorney; and 2) **Authorized** the City Manager to Execute the Agreement between the City of Morgan Hill and The Institute & Corralitos Creek, LLC; Subject to Review and Approval by the City Attorney.*

4. **APPROVAL OF INSTALLATION OF PERCHLORATE REMOVAL SYSTEM FOR NORDSTROM WELL FOR SUMMER OF 2005**

Action: ***Authorized** Issuance of Purchase Order to US Filter in the Amount of \$158,082.*

5. **THIRD AMENDMENT TO AGREEMENT WITH THE STROMBOTNE LAW FIRM**

Action: ***Authorized** the City Manager to Execute a Third Amendment to Agreement with the Strombotne Law Firm.*

6. **SECOND AMENDMENT TO AGREEMENT WITH MACLELLAN WOLFSON ASSOCIATES**

Action: ***Authorized** the City Manager to Execute a Second Amended Agreement with MacLellan Wolfson Associates.*

7. **AGREEMENT WITH THE LAW FIRM OF JORGENSEN, SIEGEL, McCLURE & FLEGEL, LLP**
*Action: **Authorized** the City Manager to Execute an Agreement with the Law Firm of Jorgenson, Siegel, McClure & Flegel, LLP. (Vierra Case)*
8. **AGREEMENT WITH THE LAW FIRM OF JORGENSEN, SIEGEL, McCLURE & FLEGEL, LLP**
*Action: **Authorized** the City Manager to Execute an Agreement with the Law Firm of Jorgenson, Siegel, McClure & Flegel, LLP. (Berkman, et al Case)*
9. **AMENDMENT TO CONTRACT FOR CONSULTANT PLANNING SERVICES**
*Action: **Authorized** the City Manager to Execute a Contract Amendment in an Amount Not to Exceed \$37,637 for Contract Planning Services.*
10. **ADOPT ORDINANCE NO. 1719, NEW SERIES**
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1719, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 2.22.010 (Establishment of boards and commissions) OF Chapter 2.22 (Master Provisions for Boards and Commissions) OF TITLE 2 (Administration and Personnel) DELETING REFERENCE TO THE PERSONNEL COMMISSION AND RENAMING THE LIBRARY COMMISSION.***
11. **ADOPT ORDINANCE NO. 1720, NEW SERIES**
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1720, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO SECTION 18.76.250.H.1.B OF THE SIGN CODE TO INCREASE THE MAXIMUM ALLOWABLE SIGN AREA FOR ON-SITE FREESTANDING SIGNS ON LOTS FIVE ACRES OR GREATER IN SIZE IN COMMERCIAL AND INDUSTRIAL PLANNED UNIT DEVELOPMENTS FROM 48 SQUARE FEET TO 50 SQUARE FEET (ZA-05-02: TEXT AMENDMENT – MONUMENT SIGNS/FORD MOTOR CO.)***
12. **ADOPT ORDINANCE NO. 1721, NEW SERIES, AS AMENDED**
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1721, New Series, As Amended, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING TEXT AMENDMENTS TO CHAPTER 6.36 (ANIMALS AND LAND USE) OF TITLE 6 (ANIMALS) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL. (ZA-04-22: CITY OF MORGAN HILL-ACREAGE REQUIRED FOR ANIMALS; AND REQUIREMENT FOR RESIDENTIAL PRIVATE LIVESTOCK PERMIT).***

13. **APPROVED SPECIAL CITY COUNCIL MEETING MINUTES OF APRIL 6, 2005**

14. **APPROVED SPECIAL CITY COUNCIL MEETING MINUTES OF APRIL 11, 2005**

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Council/Agency Member Tate and seconded by Council/Agency Member Sellers, the City Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Items 15-16, as follows:*

15. **MORGAN HILL COURTHOUSE AGREEMENT**

Action: ***Authorized** the Executive Director/City Manager to Execute, making Minor Modifications as needed and Subject to Review and Approval as to form by the City Attorney/Agency Counsel, an Agreement with the County of Santa Clara Regarding Clarification of the County's Responsibilities under the Existing Ground Lease.*

16. **APPROVED SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF APRIL 6, 2005**

Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Agency Member and seconded by Agency Member, the Agency Board unanimously (5-0) **Approved** Consent Calendar Items 17-22, as follows:*

17. **MARCH 2005 REDEVELOPMENT AGENCY FINANCE & INVESTMENT REPORT**

Action: ***Accepted** and **Filed** Report.*

18. **THIRD QUARTER REPORT FROM THE CHAMBER OF COMMERCE ECONOMIC DEVELOPMENT PARTNERSHIP**

Action: *1) **Accepted** Report; and 2) **Authorized** the Executive Director to Amend the Agreement, as necessary, to Allow for Monthly Invoicing of Services; Subject to Review and Approval by Agency Counsel.*

19. **CASA DIANA MIXED-USE PROJECT - LAND ACQUISITION AND MASTER PLANNING LOAN**
*Action: **Authorized** the Executive Director to do Everything Necessary and Appropriate to Negotiate, Execute and Implement a Loan Agreement with EAH, Inc., Subject to Review and Approval by Agency Counsel, for a Loan of Up to \$2,165,000 for EAH, Inc. to Acquire Two Parcels of the Casa Diana Housing Commercial Mixed-Use Project, and to Master Plan the Entire Area.*
20. **AGREEMENT WITH RICHARDS, WATSON & GERSHON**
*Action: **Authorized** the Executive Director to do Everything Necessary to Prepare and Execute an Agreement with Richards, Watson & Gershon (RWG) in an Amount not to Exceed \$35,000 for Services Associated with Evaluating the Feasibility of Amending the Redevelopment Plan; Subject to Review and Approval by Agency Counsel.*
21. **HOUSING TRUST OF SANTA CLARA COUNTY**
*Action: **Authorized** the Executive Director to do Everything Necessary to Prepare and Execute the Required Agreements with the Housing Trust of Santa Clara County (HTSCC) to Commit \$200,000 in Agency 20% Housing Set Aside Funds to the HTSCC over a Three-Year Period; Subject to Review and Approval by Agency Counsel .*
22. **HABITAT FOR HUMANITY – HOUSING PROJECT**
*Action: **Authorized** the Executive Director to Execute any and all Documents Necessary, Subject to Review and Approval of Agency Counsel, to Grant Silicon Valley Habitat for Humanity (Habitat) an Amount Not to Exceed \$560,000 for the Construction of a Six-Unit Affordable Ownership Housing Project, Subject to Review and Approval by Agency Counsel.*

City Council Action

OTHER BUSINESS:

23. **URBAN LIMIT LINE-GREENBELT STUDY: REVIEW OF ADVISORY COMMITTEE RECOMMENDATIONS**

This item was heard out of order, following Items 26 and 27.

Project Planner David Bischoff presented the staff report as provided in the agenda packet. He noted that there were several supplemental documents that had been provided to the Council on the dais. He stated that the staff would be happy to return to the Council at a later date with a complete analysis of the various proposals received this evening from the public on the ULL study.

Mayor Kennedy opened the public comment.

Mr. Andy Faber, representing Kevin Lai, spoke on this property owner's behalf regarding the development of their property on Tilton and Hale. He provided council with a written statement of his

request for consideration. He expressed concern about the permanency of the ULL boundary; and stated that he felt this was a harsh situation for a property in such a developable location. He requested that staff consider including this property in the ULL, or at least changing the text to reflect a less permanent designation so that the property is not left unable to be developed.

Michele Beasley from Greenbelt Alliance, stated this committee never reached consensus and approving this would not be in the best interest of citizens of Morgan hill. She feels that the minority report should be reviewed to eliminate contentious points. Requested the Council send it back to the ULL to study the minority report. If the Council goes ahead with approval, she would like to see the Advisory Report and Minority Report kept as equal to the ULL report.

Brenda Torres, Executive Director of Santa Clara Valley Audubon Society, spoke on behalf of their nearly 200 members who are residents of Morgan Hill. She expressed strong support for the minority report.

Jeffrey B. Hare, speaking on behalf of the Nick Sr. and Jackie Borina Trust, stated that the Committee Report, the minority report and the late submitted alternative proposal do not address the issues that need to be reconciled with the LAFCO regulations. Also adequate funding sources are not identified. Improperly shifts the burden of projects to people who have no opportunity to vote on this or have much say on what is going on. SE quadrant residents are not able to vote on this issue as they are not residents of Morgan Hill. These proposals can put property owners into limbo for decades. At a minimum the Council has to address these issues.

Steve White, President of Anchor Point Academies, stated that he feels he has negotiated a win-win situation with the committee. He is essentially in agreement with the final report. He is asking the Council to reconsider one portion of report to allow exchange of some of their land with some of the city land to allow a home to be built in the area of the water tank. As it is now they are left with an isolated piece of property. Second point – the report asks to bring in a road to allow access to their property. They have suggested something that the Planning Department should review to see if there is significant community benefit to the city in their proposal.

Alex Kennett stated that there are several issues to be addressed. For example, the city requiring the county to get local planning approval for structures that would be built in the county and visible to those in the city. Also, fair market for land owners should be addressed. The alternate plan allows them to negotiate as early as 2007 with the city. Now people feel there is no advantage to being outside the line. He also served on the Gilroy agricultural mitigation committee, and in that experience they were able to keep working on it until all were satisfied with the result. He hopes to achieve more of a consensus on this report. It would be good to take what time is needed to get it right.

Council Member Grzan noted that the revised map, submitted as a supplemental document, is more conservative than what is in the staff report.

Mr. Kennett responded that the map is slightly different, in that it brings the line on Hill road closer to what the ULL Committee had recommended.

Mr. Kennett stated that he proposes that whatever is decided be taken to voters in 2006 so that subsequent Councils could not arbitrarily change the ULL to protect the future.

Brian Schmidt from Committee for Green Foothills stated he supports Mr. Kennett's recommendation to send it back to the ULL subcommittee for further study. He said that regarding the comments made earlier on LAFCO and funding, that is correct for the main committee report, but not for minority report. The Minority report can go ahead without any annexation changes that have to go to LAFCO, until much further down the line. The Minority report also provides a funding mechanism. He feels that the Minority report needs to be brought back for further discussion.

Tim Chiala stated that his major problem with the Minority report is that the land value would have to be lowered in order for them to be compensated. The ULL subcommittee used real numbers. He is disappointed that the environmental community used scare tactics to get support.

Mr. M.L. Taggart, stated he is upset that the council keeps talking "city", when the Baird ranch is in county and they can't vote. How can the city come and tell them what they can do. Feels it is unfair.

Bruce Tichinin stated he hopes that Mr. Chiala can keep farming here forever. He wanted to address the issue of the land losing value. His plan in the Minority report was to prevent that from happening. He wanted to get full market value to land owners

Manou Mobidshalin stated he owns 460 acres next to Oakridge, which was already divided into 23 parcels when he bought it. He did not develop it because he did not think it would be an attractive development. He is willing to change the design plans to try and make something beautiful. He is located in county, but wants to make it beautiful for the city. He stated he just wanted to get this on the record.

No further public comment being offered, the public comment was closed.

Mayor Kennedy disclosed that he had met with Mr. White , Mr. Conte, Mr. Mobidshalin, and Mr. Faber briefly at various times. As the Chairman of the ULL Committee he feels that a lot of the suggestions in the alternate proposal should be incorporated because there are some good suggestions being put forward. He recommended that the Council proceed with the staff recommendations; and also to direct the staff to return to the Council in June with an analysis of the all the various proposals that have been submitted. Then, if the Council wants the ULL Committee to take further action, that would be the time for Council to direct that.

Council Member Grzan stated that he has been a member of committee for over 2 years, and can assure everyone that the members worked hard and passionately for the concerns of Morgan Hill and the preservation of its rural character. They did not achieve consensus, which made it difficult to present a final report. The Minority report deserves some significant credibility, and if it goes back to staff it should receive equal weight in evaluation, and a matrix should be drawn comparing the strengths and weaknesses of both. There should be a simple review and an honest review. He wanted to add his

comments to the Mayor's recommendation, but would like to reserve further discussion until after staff comes back with further analysis.

Council Member Tate disclosed that he met with Mr. Kennett, Mr. Faber and Mr. Lai. He agrees that further work needs to be done to consider all that is before them tonight. He sees many benefits and advantages to the city with the alternative proposal, and wants to see both sides of the issue before making a decision. He is unsure if an in-depth analysis is a staff function or should be done by the group that has worked on the study.

Mayor Kennedy stated that is why he recommended that staff look at all proposals in detail. As of tonight, they have not had time to perform an extensive review. He recommends that the Council give them time to do that and bring it back. If the Council believes at that time they need to have a committee work on it more, that would be the time for that decision.

Council Member Carr asked how the Planning Commission and current Council Subcommittees are to be involved in the process.

Mayor Kennedy responded that is one of reasons that the staff recommended process is so important. The Planning Commission would be involved in most of the actions that will need to be taken after the final adoption of the ULL. He asked the Director of Community Development Molloy-Previsich to speak to that issue.

Director of Community Development Molloy-Previsich stated that staff is viewing the work product as a planning feasibility study. When directed to come back with steps for implementation, they would come back with identification of particular projects needed to be done to implement, most likely in June.

Council Member Carr stated that he feels it is premature to send anything to the Planning Commission at this time.

Ms. Molloy-Previsich stated that she agreed with Council Member Carr, and that she would like to have the opportunity to break down the process into action steps to move into the implementation phases, with time lines, public participation, discussions, etc. before the Planning Commission becomes involved.

Council Member Sellers asked for a clarification as to whether the staff involved from this point forward would be the Planning staff.

Ms. Molloy-Previsich stated that her intent is to become more involved along with others on her staff, as well as David Bischoff, whose position is proposed to continue in next year's budget. Her approach will be a team approach.

Council Member Grzan requested further analysis and a clear comparison on the two proposals that have been made.

Ms. Molloy-Previsich stated that her intention would be to analyze the requests that have been received tonight.

Council Member Sellers stated that the Council has received a lot to absorb tonight, and a thorough staff analysis needs to be brought back to the Council. He noted that there is a learning curve for the Council members so that all five will be able to deal with only a fully mature idea. He suggested bringing this to another “sub-committee” type entity to get the questions answered and issues resolved before returning it for Council consideration. He also expressed concern for those who reside outside of the city limits who feel vulnerable to the decisions being made by the city, and he asked that, while meeting the expressed desire of the city’s residents, they also be kept in mind because they have a lot at stake. He suggested giving consideration to the formation of a sub-committee during the time the staff is doing their analysis, so they would be ready when the staff returns in June and they can be given a specific charge at that time. He stated that he is not comfortable with the other staff recommendations on the market analysis and the work plan item. He also reported that he had held meetings with Mr. Tichinin, Mr. Schmidt and Mr. Jacobi.

The Mayor commented on Mr. Taggart’s concerns about his interests as a non-resident of the city who has no vote on what is being decided for him. The Mayor reported that when the ULL committee was formed, this was recognized as a major concern, so in order to address this issue, over half of the members of the ULL were persons living outside of the city limits. The city does have a Sphere of Influence and the County has assigned the city the responsibility for planning use of that land. A great effort was made to involve those residing in the sphere of influence in this process.

Mayor Kennedy recommended that the Council take action on the staff recommended actions, as stated, and also analyze the alternatives proposed.

Council Member Tate stated that he agrees on moving forward with the staff recommendations. He also wants to give the ULL committee an opportunity to try and reach a consensus and finish what they started.

Council Member Grzan noted that this is an historical undertaking dealing with the preservation of open space and greenbelt that will have an impact on the residents of Morgan Hill for generations to come. We have an opportunity that most cities around Morgan Hill do not have, and he wants to be careful to understand all the issues and move forward cautiously. He feels that all the members of the Council need to be well informed on all the issues involved and proceed with care.

Council Member Carr disclosed that he had conversations with Mr. Schmidt, Mr. Tichinin. He expressed his thanks to all the ULL Committee members, and all who have followed their work with interest, for all their hard work and input. He stated he does not feel an urgency to solve this issue tonight or in the immediate future, and wants to take time to work through some of the issues. Taking a little longer can only help to come up with a better product. He would like to see an adjustment to the staff recommended actions. He is O.K. with the land market analysis being in the budget, but wants to discuss when that will be done. He would like to see a staff analysis and a work plan, and a comparison of the proposals would be helpful to him. He also stated that he sees three plans to be compared, not just

two; and he wants to be able to look at all three of them. He requested that the staff also provide their input on how the Planning Commission, any subcommittees and the ULL Committee will be utilized in the future.

Mayor Kennedy made a motion to proceed with the staff recommended actions, and include a comparison and evaluation of all three proposals –the ULL Committee recommendations, the Kennett, Tichinin & Beasley proposal, and the proposals by the property owners of the Anchor Point and the Lai property.

Council Member Tate seconded the motion with the understanding that this information will be brought back to the Council in June for implementation at that time.

Council Member Carr emphasized that all three plans receive equal comparison and analysis.

Action: *On a motion by Mayor Kennedy and seconded by Council Member Tate, the City Council unanimously (5-0) **Received** the Urban Limit Line Advisory Committee's Final Report.*

Action: *On a motion by Mayor Kennedy and seconded by Council Member Tate, the City Council unanimously (5-0) **Directed** Staff to Include an Industrial Land Market Analysis as a Work Plan Item in the Fiscal Year 2005/2006 City Budget.*

Action: *On a motion by Mayor Kennedy and seconded by Council Member Tate, the City Council unanimously (5-0) **Directed** Staff to prepare an equal evaluation and comparison of all three proposals presented to the City Council tonight – the ULL Committee recommendations, the Kennett, Tichinin & Beasley proposal, and the proposals by the property owners of the Anchor Point and the Lai property - and return to the Council in June with this comparison analysis and recommendations for an action plan to move the Urban Limit Line-Greenbelt Program forward into the environmental review and implementation process.*

City Council Action

PUBLIC HEARINGS:

24. WATER CONSERVATION SUBMETERING ORDINANCE (Continued from April 6, 2005) *Ordinance No. 1722, New Series*

Tony Eulo presented the staff report as provided in the agenda packet.

Mayor Kennedy opened the public hearing.

No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Grzan, the City Council unanimously (5-0) **Waived** the Reading in Full of the Ordinance to Amend Chapter 13.04 of the Municipal Code.*

Action: *On a motion by Council Member Tate and seconded by Council Member Grzan, the City Council **Introduced** Ordinance by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 13.04 (WATER SYSTEM) OF TITLE 13 (PUBLIC SERVICES) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING WATER METERS FOR MULTI-UNIT DWELLINGS**, by the following roll call vote: **AYES:** Carr, Grzan, Kennedy, Sellers, Tate; **NOES:** None; **ABSTAIN:** None; **ABSENT:** None.*

25. SOLID WASTE MANAGEMENT RATE ADJUSTMENT
Resolution No. 5901

Tony Eulo presented the staff report as provided in the agenda packet.

Mayor Kennedy opened the public hearing.

No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Grzan, the City Council unanimously (5-0) **Adopted** the Refuse Rate Resolution.*

City Council Action

OTHER BUSINESS: (CONTINUED)

Council Member Tate, as a member of the IDI Board, excused himself from participation in Items 26 and 27 and stepped down from the dais.

Mayor Kennedy noted that a request had been made to hear items 26 and 27 out of order immediately after the Consent Calendar items. There was no objection from the Council; items 26 and 27 were heard immediately following the consent calendar. Item 27 was heard first, and then item 26; followed by a joint Council discussion and decision on both items.

26. AGREEMENT BETWEEN THE CITY AND INDEPENDENCE DAY, INC. (IDI) TO CO-SPONSOR THE JULY FOURTH CELEBRATIONS

(Item 26 and the Council discussion occurred after the presentation of item 27.)

There was no oral staff report presented on this item.

Ms. Daryl Manning provided a PowerPoint presentation on the 4th of July IDI celebration. She stated

that IDI was requesting \$11,000 in funding support from the city.

Mayor Kennedy opened the public comment.

No public comment being offered, the public comment was closed.

Council discussion of item 26:

Council Member Grzan stated that the Independence Day event has been a wonderful event for the city for many years, and makes Morgan Hill unique from other communities. He expressed his support for the funds being requested.

Council Member Sellers stated that he has served on the boards of both IDI and the Mushroom Mardi Gras and that both are very worthy events. He also stated that he is very happy that the Mushroom Mardi Gras will be downtown this year. He is interested in figuring out how to help the Mardi Gras, and perhaps be a sponsor, but that the Council has made an implied commitment to IDI early on, and that their budget and planning has been based on that implied commitment. If Mardi Gras is given funding, it should be in addition to, and not instead of, funding of IDI.

Council Member Carr suggested that the Council determine a combined ceiling of dollars that can be divided between the two. He suggested that the Community and Economic Development Committee be directed to find a way to divide a specified amount between the two organizations.

Mayor Kennedy supported this idea as a very good suggestion to meet the needs of both of these very worthy organizations.

Council Member Sellers agreed with Mr. Carr's suggestion, and stated that a special meeting of the Community and Economic Development Committee was scheduled in the near future, and this could be added to the agenda.

Council Member Carr stated his desire to formulate a motion, but requested input on what the amount should be for the total available funds. He asked if it should be set at \$21,000.

Council Member Sellers stated that at least \$5,000 should be given to the Mardi Gras, and that may be all that the city can afford this year.

Mayor Kennedy noted that there is an issue of precedence to be considered, as venues such as the Taste of Morgan Hill have not been provided with support in the past. He requested that the issue of precedence and fairness be considered, and felt that a funding cap of \$15,000 would be appropriate for the Community and Economic Development Committee to divide among IDI and the Mardi Gras.

Council Member Sellers stated that it is important to include the specific use of these types of funds in the budget discussions this year.

Council Member Grzan asked where the funds would come from if we exceed the budget. In response, he was told that this would be a determination of the Community and Economic Development Committee as they reviewed this request.

Council Member Carr stated that the Committee will explore the question of what returns the city can expect on their investment in these events, and how to capture this income for use as resources for other events.

Mayor Kennedy requested a determination of what the criteria will be for providing assistance, what the city can expect in return, and whether their need for support will phase out.

Council Member Sellers stated that the Community and Economic Development Committee should be able to return to the Council with their recommendation by the first meeting in May.

Action: *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council unanimously (4-0 with Tate absent) **Directed** the Community and Economic Development Committee to review the requests for funding submitted by IDI and the Mushroom Mardi Gras, and determine the division of \$16,000 in funding between the two organizations, presenting their recommendations to the City Council at the meeting of May 4, 2005.*

Council Member Tate returned to the dais after the conclusion of business on items 26 and 27.

City Council and Redevelopment Agency Action

OTHER BUSINESS:

27. REQUEST FOR SPONSORSHIP OF THE 26TH ANNUAL MORGAN HILL MUSHROOM MARDI GRAS EVENT

(Item 27 was heard prior to Item 26)

There was no oral staff report presented on this item.

Ms. Sunday Minnich, spoke on behalf of the Mushroom Mardi Gras, and reported that the festival will be moved to the downtown area this year. She stated that once they have established themselves in this new location, they will no longer need financial assistance from the city. She also noted that they were not aware that their request would create a conflict with the funding of IDI, so she wanted to make it clear that any amount of funding the city feels they can afford would be greatly appreciated. The reason they have come to the city for assistance is that they will not be able to fence the Mardi Gras and charge a gate fee this year, and they need assistance to alleviate the loss of this income. Their expenses have been reduced in their move to downtown this year by not having to pay for fencing and not recruiting “name” entertainment.

Ms. Minnich reported that the city does receive financial benefits from the Mardi Gras in the form of increased sales tax and hotel tax revenues. This year they expect over 100 vendors to participate, and some of the hotels have reported they are already filling up for this event in May. Local vendors are given preference and a discounted rate, and many use the event for fund raising purposes. The Downtown Association has officially supported and endorsed the Mardi Gras and are partners with them.

Council Member Grzan expressed his hope that they will be able to increase their revenues to make up for their loss of the gate fee.

No further comments.

Council consideration continued with Item 26.

Action: (See action listed under Item 26, above)

City Council Action

OTHER BUSINESS: (CONTINUED)

28. ADOPTION OF ETHICS POLICY FOR CITY COUNCIL, COMMISSIONERS, BOARD MEMBERS, AND COMMITTEE MEMBERS

City Manager Tewes presented the staff report as provided in the agenda packet.

Mayor Kennedy opened the public comment.

No comments being offered, the public comment was closed.

Council Member Grzan stated that he is concerned about the phrase “I am impartial when making decisions” contained in the Expressions of Core Values column of the chart provided in the staff report. He stated that when he feels passionate about a subject being considered, he cannot say that he is impartial because he has core values that drive him to make his decisions.

Acting City Attorney Siegel explained that there are times when the Council has to be impartial when they are in an adjudicating position, (i.e., when hearing appeals).

Council Member Tate explained that the recommended policy is based on a consensus of a small subset of what was covered in the discussions of the Subcommittee. The recommendation to adopt this policy is just a starting point, and this policy should be given to the members of the boards, commissions, and committees for their input and comments. This is meant to be a “living” document that can be changed to fit needs as they arise. The policy should be reviewed at least once a year, and be re-committed to each year to keep it fresh and relevant.

Council Member Grzan suggested having this annual review be a part of the Council retreat. He agreed with the idea of gathering input from the members of the various boards, commissions, and committees so they can be a part of the process as well.

Council Member Sellers stated that ethics are not possible to put down on paper, and the point is missed when an attempt is made to codify them. The true meaning of being positive, inclusive and above board is lost in the process. The true test is not to adhere to every line, but that good ethics happen because that is how we do things in the community. He agreed that there needs to be a regular review.

Action: *On a motion by Council Member Tate and seconded by Council Member Grzan, the City Council unanimously (5-0) **Adopted** the Ethics Policy.*

Action: *On a motion by Council Member Tate and seconded by Council Member Grzan, the City Council unanimously (5-0) **Directed** Staff to Distribute Ethics Policy to all Commissioners, Board Members, and Committee Members; **Solicit** Input, and **Report** Back to City Council*

Action: *On a motion by Council Member Tate and seconded by Council Member Grzan, the City Council unanimously (5-0) **Directed** Staff to Provide Training on the Ethics Policy to all Commissioners, Board Members, and Committee Members, following City Council Approval of the Finalized Version of the Ethics Policy*

Action: *On a motion by Council Member Tate and seconded by Council Member Grzan, the City Council unanimously (5-0) **Directed** staff to schedule an annual review and update of the Ethics Policy.*

29. RECONSIDERATION OF FISCAL YEAR 2005-2006 OPERATING AND CAPITAL IMPROVEMENT BUDGET SCHEDULE

Mayor Kennedy suggested rescheduling the budget workshop to Friday, June 10.

City Manager Tewes stated that the impact on staff will depend on what the Council requests of staff at the workshop. If the Council makes significant changes at the workshop there would not be time to prepare before the budget adoption is required.

Council Member Grzan suggested that if the Council could get the budget documents soon enough before the workshop, it might help.

The City Manager responded that he is required to deliver the budget on May 15, and he will need all that time to prepare.

Council Member Sellers stated that he is concerned about the staff being impacted negatively by the change to the June 10 date for the workshop.

Council Member Carr stated that the presentation by the staff is the most valuable to him, but that he would need to check his schedule to see if he has a conflict caused by June 10 being the last day of school.

It was discussed and rejected to divide the budget presentations into two days, doing CIP and Operating Budget on different days.

Mayor Kennedy asked Council Member Carr to check his June 10 commitments so the Council can discuss and decide this issue at the next Council meeting.

Action: *On a motion by Mayor Kennedy and seconded by Council Member Grzan, the City Council unanimously (5-0) **Continued** this item to May 4, 2005.*

30. AWARD CONTRACT FOR CONSTRUCTION OF INDOOR RECREATION CENTER
(Continued from April 6, 2005)

Director of Public Works Ashcraft presented the Supplemental staff report as provided to the City Council at this meeting. He asked the Council to consider approving all the recommendations in the supplemental staff report, including awarding the bid.

Council Member Grzan questioned staff on the revenue projections and what population they are based upon. He also expressed a concern about a partnership with the YMCA causing an increase in costs.

Recreation and Community Services Division Manager Spier responded that they are based on the Sports Management Group study, and include about 20% from San Martin. She also stated that the fees are lower than the YMCA fees.

City Manager Tewes added that, based on the study done by the consultant of comparable facilities and communities, there is no reason to believe that the fees would not be affordable to our citizens.

Council Member Carr commented that the Public Safety and Community Services Committee has directed staff to speak with the YMCA to determine if the partnership will still be acceptable.

Council Member Grzan reported that he had spoken with Monterey, and they told him they were not making enough income to offset their costs.

City Manager Tewes asked Council Member Grzan to provide him with the name of his contact in Monterey so that he can talk with them and get the information on Monterey's situation.

Recreation and Community Services Division Manager Spier offered to provide Council Member Grzan with a comparison sheet of comparable indoor recreation facilities so he can see how they are doing in their operations.

In response to an inquiry by the Mayor, Ms. Spier stated that the rock climbing wall had been value engineered out of the plan, so they would have to have a portable wall.

Mayor Kennedy opened the public comment.

No comments being offered, the public comment was closed.

Council Member Sellers thanked the staff for coming in with the project within budget, and stated that he believes it will be a success. He made a motion to approve the staff recommended actions in the supplemental staff report, and Council Member Carr seconded.

Council Member Grzan stated that he will not be supporting the motion. He is interested in recreational programs, but cannot support this project because of the significant deficits in the community. He cannot approve moving forward with new projects when we have difficulty sustaining the ones we already have; and he fears that this will cause a need for reduction in services. He wants the Council to focus energy and dollars on maintaining what we have before adding additional debt. He stated that he knows of no recreational agency that makes sufficient moneys to sustain themselves, and that this will add a significant risk if it goes forward. Therefore, he will not be supporting this project or others until the economic issues are resolved.

Council Member Tate stated that he was in agreement with Council Member Grzan, but he will support the motion because the Council had previously made the decision to move forward with this project and he needs to support that direction. He shares some of the same concerns, but hopes that this project will be successful. So far he feels that they are doing well with what they have done.

Mayor Kennedy stated that he is supporting the motion. He feels that the consultants have done a good analysis; they have a proven track record with their estimates at the Aquatics Center and have achieved the goals they set. He is comfortable that there is minimal risk in proceeding, and that the center will provide a benefit to the community that is needed. He feels it makes sense to proceed.

Acting City Attorney Siegel made a clarification of the motion that in addition to awarding the contract to the 2nd lowest bidder, the apparent low bidder is being released and the terms outlined in the letter from Kimberly Fisher of West Bay Builders, Inc. to provide the City with \$15,000 of new fitness equipment as compensation for the City are being accepted.

Council Member Sellers included this statement as part of his motion.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council (4-0, with Grzan voting NO) **Released** the apparent low bidder, West Bay Builders, Inc. and **Accepted** their offer of compensation in the amount of \$15,000 worth of new fitness equipment as described in the April 20, 2005 letter from West Bay Builders, Inc. signed by Kimberly Fisher, General Counsel.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council (4-0, with Grzan voting NO) **Approved** the Project Plans and Specifications.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council (4-0, with Grzan voting NO) **Awarded** the construction contract to the 2nd lowest bidder, West Coast Contractors, Inc. in the amount of \$16,630,000 for base bid and additive alternate #4 (acoustical partition).*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council (4-0, with Grzan voting NO) **Authorized** the City Manager to execute various consultant agreements for professional services during construction, subject to review and approval by the City Attorney.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

1. Council Member Tate requested the Council do work plans for the various new subcommittees.
2. Council Member Tate requested a discussion on how to handle items that should be referred to the subcommittees; including a discussion of operational structure that will make the subcommittees as efficient as possible.
3. Council Member Grzan requested a review of litigation costs and attorney fees.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 10:48 p.m.

MINUTES RECORDED AND PREPARED BY:

MOIRA MALONE, DEPUTY CITY CLERK/DEPUTY AGENCY SECRETARY